

File 102  
Lake

# INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

*We make Indiana a cleaner, healthier place to live*

*Evan Bayh*  
Governor  
*Kathy Prosser*  
Commissioner

105 South Meridian Street  
P.O. Box 6015  
Indianapolis, Indiana 46206-6015  
Telephone 317-232-8603  
Environmental Helpline 1-800-451-6027

January 28, 1992

VIA CERTIFIED MAIL - P124-434-160

January 28, 1992

Mr. Michael Reis, President  
Pollution Control Industries of Indiana, Inc.  
4343 Kennedy Avenue  
East Chicago, Indiana 46312

Re: Regulatory Interpretation of  
Off-Gases from Aerosol Cans  
Pollution Control Industries of  
Indiana, Inc.  
East Chicago, Indiana  
IND 00646943

Dear Mr. Reis:

The Indiana Department of Environmental Management (IDEM) acknowledges receipt of your letter dated October 31, 1991. The letter requests a regulatory interpretation of the off-gases or propellant from aerosol cans being a hazardous waste.

A hazardous waste determination must first be made on the aerosol cans coming on-site. If the waste aerosol cans are a characteristic hazardous waste as defined by 329 IAC 3-5 (40 CFR 261.21), then the off-gases would have to be evaluated to determine if they are still a characteristic hazardous waste. If the off-gases exhibit a characteristic of a hazardous waste, then they would have to be managed as a hazardous waste.

However, if the aerosol cans contain a P or U listed waste as defined in 329 IAC 3-6-4 (40 CFR 261.33) and those wastes are themselves fuels, then the off-gases would not be a hazardous waste.

The U.S. EPA has indicated that these aerosol can crushing units may be regulated as Subpart X units under 40 CFR 264. For further guidance on determining the regulatory status of these unit(s) contact Mr. Hak Cho, U.S. EPA, Region V, Indiana Technical Unit, 77 West Jackson Street, Chicago, Illinois 60604-3590.

Mr. Michael Reis  
Page 2

If you have any questions concerning this matter, please contact Mr. Jim Gross at 317/232-3398.

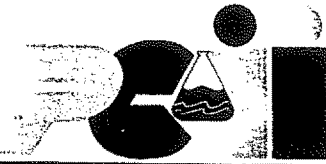
Sincerely,

A handwritten signature in black ink, appearing to read "Thomas E. Linson", with a stylized flourish at the end.

Thomas E. Linson, Chief  
Hazardous Waste Management Branch  
Solid and Hazardous Waste Management

JDG/go

cc: Mr. Hak Cho, U.S. EPA, Region V



Pollution  
Control  
Industries  
of Indiana

4343 Kennedy Avenue  
East Chicago, IN 46312  
(219) 397-3951  
FAX: (219) 397-6264

APR 22 12 05 PM '92  
DEPT. OF ENVIRONMENTAL  
MANAGEMENT  
HARRISBURG, PA  
SEM

April 17, 1992

Mr. Dave Berry  
Indiana Department of Environmental Management  
105 South Meridian  
Indianapolis, Indiana 46225

RE: Regulatory Status for Flare Use  
for Ignitable Propellants

Dear Mr. Berry:

As we had discussed at our meeting on April 14, 1992, Pollution Control Industries of Indiana, Inc. is seeking guidance from the Indiana Department of Environmental Management regarding the hazardous waste regulations for a flare used for ignitable propellants.

The issue are as follows:

Pollution Control Industries of Indiana, Inc. (PCII), is evaluating the use of a flare to burn off excess ignitable propellants from a aerosol can recycling unit. PCII's primary preference would be to use the propellants as a fuel, the propellants would consist of such gases as butane, propane, heptanes, hexanes, etc.). If the situation occurs where a user can not be found or the user can use only a limited amount of the gases, there would be a need to reduce the volume of propellants generated, and a on-site flare would accomplish this.

Pollution Control Industries of Indiana acknowledges that a permit or registration under the Clean Air Act (CAA) may be required but is unsure regarding the status of a flare under the hazardous waste regulations.

The specific questions the firm wishes to ask are as follows:

- 1) If the ignitable propellants are to be flared and not used as a fuel, what would be the regulatory status of the gases while being stored?
- 2) If the flare is regulated under the hazardous waste regulations, how would the unit be defined as a tank, miscellaneous unit or other.

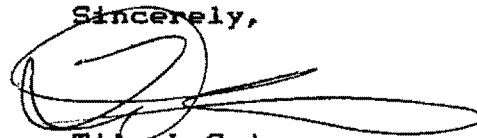
IDEM

Page 2 of 2

- 3) If warranted, what information would be required for a hazardous waste permit modification.
- 4) If a hazardous waste permit modification is needed, approximately how long would approval take from the time an initial, reasonable complete modification request is reviewed.

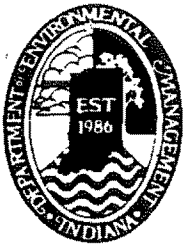
In behalf of Pollution Control Industries of Indiana, I would like to thank you and Mr. Jim Gross for taking the time to speak with myself and Mr. Dan Banaszek. The meeting was very informative and beneficial for all those involved. Again, thank you for your time regarding this matter and please contact me if you have any further questions.

Sincerely,



Tita LaGrimas  
Director of Regulatory Affairs

CC: Mr. J. Gross/IDEM  
Mr. D. Banaszek



# INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

*We make Indiana a cleaner, healthier place to live*

Evan Bayh  
Governor  
Kathy Prosser  
Commissioner

105 South Meridian Street  
P.O. Box 6015  
Indianapolis, Indiana 46206-6015  
Telephone 317-232-8603  
Environmental Helpline 1-800-451-6027

Ms. Tita LaGrimas  
Pollution Control Industries of Indiana  
4343 Kennedy Avenue  
East Chicago, Indiana 46312

June 15, 1992

Dear Ms. LaGrimas:

Re: Regulatory Status of Flare

This is in response to your request for information regarding the regulatory status under the hazardous waste rules of a flare used to burn propellents from an aerosol can recycling unit, and the regulatory status of the propellents while being stored prior to burning for disposal.

Under the hazardous waste rules the definition of solid waste includes contained gases. If the propellents exhibit any characteristic or are listed in the rules and the propellents are burned for disposal purposes as you have indicated the aerosol containers would be regulated as a hazardous waste and would be subject to container storage requirements prior to introduction into the aerosol can recycling unit.

Upon removing the gases from the containers, the hazardous waste gases which cannot be reclaimed or reused must be collected and disposed of in a permitted hazardous waste management unit. The use of a flare as you have proposed would be subject to permit requirements under the hazardous waste rules, and would require modification of your permit. It is estimated that a permit modification would take approximately one year to process. Please see 40 CFR 270.42 for the procedures governing permit modifications. The use of the flare would be considered thermal treatment and permitting would likely be under the provisions for miscellaneous units.

If you should have any further questions regarding this matter, please contact Mr. Dave Berrey at 317/232-4417 or Mr. Jim Gross at 317/232-3398.

Sincerely,

Thomas Linson, Chief  
Hazardous Waste Management Branch  
Solid and Hazardous Waste Management





PCI

101Dfag  
OFFICE OF SOLID  
AND HAZARDOUS  
WASTE MGMT  
DEM

DEC 19 3 09 PM '94

See 5/1/95  
letter also  
in file 101D

November 23, 1994

Mr. Victor P. Windle  
Solid & Hazardous Waste Management  
Indiana Department of Environmental Management  
100 North Senate Avenue, #N1154  
Indianapolis, IN 46206

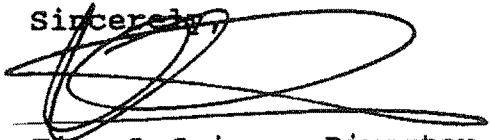
Dear Mr. Windle:

Enclosed, pursuant to 270.72, please find a revised Part A application making a change in interim status to add two recycling units (the aerosol can unit and the shredding tower) now in operation at the Pollution Control Industries of Indiana, Inc. ("PCI") facility in East Chicago, Indiana. Each of these units has previously been handled by IDEM as exempt from permitting requirements when they process materials destined for energy recovery under 40 C.F.R. Part 266 Subpart H. However, EPA's October 17, 1994 memorandum regarding the "Regulation of Fuel Blending and Related Treatment and Storage Activities" signals a change in interpretation in the way such activities may be regulated by the State. Specifically, EPA has indicated that shredders and similar units may be regulated as miscellaneous units under 40 C.F.R. Part 264 Subpart X.

In light of this possible change in interpretation of existing statute, PCI wishes to remain in compliance with all RCRA requirements and now deems it appropriate to make a corollary change in interim status to include the aerosol unit and the shredding tower as interim status units. This change is necessary to comply with EPA's recent interpretation requirements indicated in EPA's October 17, 1994 memorandum. The appropriate forms are attached.

We appreciate your consideration of this matter and look forward to hearing from you.

Sincerely,

  
Tita LaGrimas, Director  
Regulatory Affairs

TL/jd

Enclosure

Pollution Control Industries

4343 Kennedy Avenue, East Chicago, IN 46312  
(219) 397-3951 FAX: (219) 397-6264





Copy sent to File 1A



## INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

*We make Indiana a cleaner, healthier place to live*

Frank O'Bannon  
Governor

Lori F. Kaplan  
Commissioner

100 North Senate Avenue  
P.O. Box 6015  
Indianapolis, Indiana 46206-6015  
(317) 232-8603  
(800) 451-6027  
[www.state.in.us/idem](http://www.state.in.us/idem)

July 18, 2002

Ms. Tita LaGrimas  
Director of Regulatory Affairs  
Pollution Control Industries  
4343 Kennedy Avenue,  
East Chicago, IN 46312

Dear Ms. LaGrimas:

Re: Indirect Thermal Desorbition Unit

This is in response to your letter of June 11, 2002 regarding the regulatory status of an indirect thermal desorbition unit you are proposing to utilize to reclaim hydrocarbons from non-liquid hazardous waste. These hydrocarbons will then be sold for utilization in the manufacture of lubricants. As we understand it, you are seeking concurrence that the unit is exempt from the need for a permit under the hazardous waste rules pursuant to the recycling process exclusion at 40 CFR 261.6 (c) (1).

Provided that the unit is used only for the reclamation of components of hazardous waste that will be legitimately utilized either directly or as ingredients in manufacturing other products you are correct in your understanding that the unit would not require a hazardous waste permit. Other uses to which this unit could be utilized; for example, to meet treatment standards for subsequent disposal, or for production of hazardous waste fuels would negate this exclusion.

If you have any questions please contact me at 317-308-3341.

Sincerely,

Dave Berrey  
Senior Environmental Manager I  
Technical Compliance Section  
Office of Land Quality





# INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

*We make Indiana a cleaner, healthier place to live.*

Mitchell E. Daniels, Jr.  
Governor

Thomas W. Easterly  
Commissioner

100 North Senate Avenue  
Indianapolis, Indiana 46204  
(317) 232-8603  
(800) 451-6027  
[www.IN.gov/idem](http://www.IN.gov/idem)

March 31, 2006

Mr. David R. Case  
Executive Director  
Environmental Technology Council  
734 15<sup>th</sup> Street, N.W. Suite 750  
Washington, DC 20005

Dear Mr. Case:

Re: Hazardous Waste Recycling

This is in response to your letter of March 13, 2006 regarding the recycling activities of Pollution Control Industries (PCI), specifically in relation to the unit described as the Solids Distillation System (SDS). I appreciate the opportunity to respond to your concerns. You are correct in your understanding that PCI claims a recycling exemption from hazardous waste permitting requirements for the SDS.

The stated purpose of your letter is to inquire whether PCI has demonstrated to the Indiana Department of Environmental Management (IDEM) or the United States Environmental Protection Agency (EPA), Region 5, that the SDS meets the sham recycling criteria established by the EPA. This type of demonstration is commonly known as a legitimate recycling determination. The issue is whether the activity is considered recycling or some form of treatment being called recycling in order to evade environmental regulation.

From a regulatory perspective, this agency considers the SDS unit to be no different than any other reclamation unit. The unit is designed to process solids for the purpose of recovering the petroleum hydrocarbon component. The recovered petroleum hydrocarbon is currently sold as a degreasing agent.

Two waste streams are generated in this process, a still bottom and a carbon char. Presently these waste streams are being managed and disposed of as listed hazardous waste. PCI is investigating possible uses of the carbon char in a manner that it would qualify for the reuse exclusions found at 40 CFR 261.2(e). When, and if, they find a use that they consider legitimate, IDEM will review their proposal for regulatory legitimacy, as is the usual practice.

As you indicated in your letter, the legitimate recycling criteria guidance has been available since 1985. This guidance was reorganized and rewritten for clarity and was proposed as a rule on October 28, 2003. This rule has never been finalized.

You make the statement that PCI is required to demonstrate to the regulatory agencies that the SDS meets the sham recycling criteria in order to qualify for the recycling exclusion. In the preamble to the proposed rulemaking EPA stated that "if the criteria were finalized as rule, it would continue to be used in the same way as current guidance is used. That is, we would expect the regulated community to continue to evaluate their recycling operations and reach their own conclusions. Such conclusions would of course be subject to review by EPA or the authorized state." (68 FR 61583)

IDEM has used the existing guidance in the spirit intended for this guidance since 1985. This spirit is expressed by EPA in the 2003 proposed rule preamble as follows: "a legitimacy determination involves evaluating site-specific information to determine whether or not a secondary material being recycled, is in effect being used as a commodity rather than a waste." The memorandum also explained that "each recycling scenario is likely to require case-specific evaluation." The memorandum further explained that "depending on case-specific facts and circumstances, certain criteria may weigh more heavily than others in making legitimacy determinations."

EPA also stated that "not all legitimate recycling will conform to each of the four criteria, and that some subjective evaluation and balancing will be required. Where more specific regulatory criteria or requirements have been established in regulations, affected parties should look to those regulatory provisions in addition to the generic criteria proposed in today's rule." (68 FR 61582) The State of Indiana has adopted more specific criteria for recycling scenarios involving use of secondary materials as manufacturing ingredients (329 IAC 3.1-6-5). Indiana regulation does not have legitimacy criteria in the rules for reclaim and reuse scenarios.

PCI met with IDEM hazardous waste program staff prior to the construction of the SDS unit. IDEM stressed that the unit could only be used to recover materials that were legitimately reused either as a manufacturing ingredient or directly as a product. If the unit was used to produce fuels or merely for treatment, the unit would require a hazardous waste treatment permit.

PCI is aware that the unit must be used to process only materials that contain recoverable quantities of petroleum hydrocarbon. IDEM compliance inspectors monitor incoming materials as a routine part of PCI's regular inspections. EPA Region 5 staff has also evaluated the SDS unit during joint inspections with IDEM. To this date we have not observed any activities indicative of sham recycling.

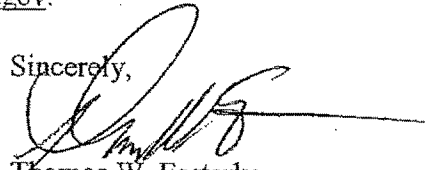
Your letter poses a number of very specific questions. The language of the letter implies that the answers are simple and straightforward. Unfortunately, this is not the case. From the time that the legitimate recycling guidance first made its debut in 1985, the criteria have been intensely debated. Even if the general idea of the criteria is accepted there is little consensus among government regulators on the application of the criteria. The criteria are by their nature subjective and will remain so even if they are finalized as rule. In their current form as guidance it is even more problematic to enforce these concepts in the fashion reflected in your letter.

I appreciate your questions and will further consider them as IDEM continues to monitor PCI's recycling activities. Should IDEM suspect a sham application, staff will use their best judgment under relevant laws, rules, and guidance. Regarding your question on the use of the carbon char as a replacement for coke, I have no information that would lead me to believe this is being contemplated. PCI recently informally indicated they were looking at an entirely different use for the char in the steel industry. If they pursue the reuse they are considering, IDEM will evaluate their proposal.

You have asked IDEM to confirm that all "materials" received by PCI for processing in the SDS are manifested and stored as hazardous waste under RCRA. This request is not consistent with regulatory requirements. The hazardous waste rules contain exemptions for certain types of materials being reclaimed. For example, characteristic sludges, characteristic by-products and commercial chemical products that are reclaimed are not solid waste, therefore can not be regulated as hazardous waste (40 CFR 261.2). PCI may also receive conditionally-exempt small quantity generator hazardous waste, household hazardous waste, and non-hazardous solid waste without a manifest. IDEM has not observed any regulated hazardous waste arriving at the facility without a manifest. For those wastes not regulated as hazardous waste, inspectors still look for compliance with solid waste rules, segregation of incompatibles, permit conditions and other applicable requirements.

If you have any questions or would like to discuss further, please contact Dave Berrey in our Office of Land Quality at 317-308-3341 or toll free at 800-451-6027. Mr. Berrey serves as IDEM's primary contact on issues related to the legitimate recycling of hazardous waste. For issues related to hazardous waste permitting, please contact Thomas Linson in our Office of Land Quality at 317-232-3292 or [tlinson@idem.IN.gov](mailto:tlinson@idem.IN.gov).

Sincerely,



Thomas W. Easterly  
Commissioner

cc: Stephen Johnson, Administrator, U.S. EPA  
Thomas Skinner, Administrator, U.S. EPA Region 5  
Margaret Guerriero, Director, Waste, Pesticides and Toxics Division  
Matt Hale, Director, Office of Solid Waste





# INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

*We make Indiana a cleaner, healthier place to live.*

Mitchell E. Daniels, Jr.  
Governor

Thomas W. Easterly  
Commissioner

100 North Senate Avenue  
Indianapolis, Indiana 46204  
(317) 232-8603  
(800) 451-6027  
[www.idem.IN.gov](http://www.idem.IN.gov)

December 1, 2006

Mr. David R. Case  
Executive Director  
Environmental Technology Council  
734 15<sup>th</sup> Street, N.W. Suite 720  
Washington, DC 20005

Re: Pollution Control Industries

Dear Mr. Case:

Thank you for your October 23, 2006, letter regarding the recycling activities of Pollution Control Industries (PCI), specifically in relation to the unit described as the Solids Distillation System (SDS). Some time has passed since the date of your letter, and I apologize for the delay in my reply. I appreciate the opportunity to address your concerns.

The stated purpose of your letter is to follow up on our March 31, 2006, letter and ask specific questions concerning whether PCI has demonstrated to the Indiana Department of Environmental Management (IDEM) or the U.S. Environmental Protection Agency (EPA) Region 5 that the recovered products being sold as a degreasing agent meets the sham recycling criteria established by EPA, with respect to legitimacy criterion number 4 (commonly referred to as "toxics along for the ride"), proposed as a rule on October 28, 2003. As of this date, this rule has not been finalized.

PCI is clearly aware that the unit must be used only for legitimate recycling and is aware of the proposed legitimacy criteria. IDEM's compliance inspectors monitor the use of the unit as a routine part of PCI's regular inspections. As previously stated, IDEM uses the present guidance in the spirit intended and will continue to do so as we monitor compliance and the use of the SDS in the future. Should we suspect a sham application, we will make our best judgment under relevant laws, rules and guidance. As of this date, our review of PCI's use of the SDS units has not resulted in any determinations that a sham situation exists.

With respect to your questions, since recycling processes are exempt from permitting, they are not regulated in the same manner as treatment of waste in permitted units. PCI's permit does not have permit conditions, nor are there regulatory requirements requiring sampling and analysis plans and testing as described in your letter. We do not have any such documents in our files. As a matter of guidance, we have consistently recommended to PCI that they should be able to defend the legitimacy of their process and products in accordance with prevailing guidance, if challenged.

If you have additional questions or comments, please contact Dave Berrey, Environmental Technical Specialist in our Office of Land Quality, Compliance Branch, at 317-308-3341 or via e-mail at

dberrey@idem.IN.gov. Mr. Berrey serves as IDEM's primary contact on issues related to the legitimate recycling of hazardous waste. For issues related to hazardous waste permitting, please contact Thomas Linson, Chief of our Office of Land Quality's Permits Branch, at 317-232-3292 or tlinson@idem.IN.gov.

Sincerely,



Thomas W. Easterly  
Commissioner

cc: Harriet Croke, EPA Region 5  
EPA Headquarters  
Thomas Linson, IDEM  
Dave Berrey, IDEM